

STATE OF MICHIGAN  
COURT OF APPEALS

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DANIEL SPOONER and LOIS SPOONER,

Plaintiffs-Appellants,

v

ROBERT LETZGUS,

Defendant-Appellee.

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UNPUBLISHED

October 30, 2007

No. 275075

St. Clair Circuit Court

LC No. 05-000936-NI

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

In this action to recover noneconomic damages from a third party under the no-fault act, plaintiffs appeal as of right from a circuit court order that granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo the trial court's order granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 120. Plaintiffs challenge the trial court's determination as a matter of law that they did not suffer serious impairment of a body function under MCL 500.3135(1).

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "[S]erious impairment of body function" means "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). In determining whether the course of a person's normal life has been affected, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id.* at 132-133. Even where there are minor changes in how the person performs an activity, a person may generally be able to continue performing that activity. *Id.* at 131. The court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Id.*

at 133. Residual impairment is not established by self-imposed restrictions based on real or perceived pain. *Id.* at 133 n 17; *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). But a self-imposed restriction may be considered where it is not based on pain but rather because the plaintiff is physically incapable of performing the activity. *Id.* at 283. See also *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005) (a court may consider changes in activities that are consistent with a physician's observation of limited movement).

Plaintiffs were in an automobile accident on April 19, 2002. Lois Spooner injured her right shoulder; Daniel Spooner struck his right knee on the dashboard, and his head on the windshield. The focus of this appeal concerns whether plaintiffs' residual impairments affected their general ability to live their normal lives.

The trial court correctly determined as a matter of law that Lois Spooner did not suffer a serious impairment of an important body function because her injury did not affect the course or trajectory of her entire normal life. Her treatment consisted of physical therapy and arthroscopic surgery on her shoulder. She continued to work in the same position. She did not offer evidence linking her decision to limit her participation in bowling, dancing, or gardening to a physician's observation of limited movement or a physical incapability of performing some motion. *McDaniel*, *supra* at 283; *Williams*, *supra* at 509. In the absence of physician-imposed restrictions or restrictions that are attributable to physical incapacity, the change in activities based on her perception of pain does not establish residual impairment. *Kreiner*, *supra* at 133 n 17; *McDaniel*, *supra* at 282-283. Although residual impairment is not essential to establishing a threshold injury and "an impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff's life is extensive," *Williams*, *supra* at 508 (citation omitted), the evidence here did not demonstrate a short-term impairment having an extensive effect on Lois's life.

The trial court also correctly determined as a matter of law that Daniel Spooner did not suffer a serious impairment of an important body function because his injury also did not affect the course or trajectory of his entire normal life. With respect to employment, he changed positions but earned the same pay and worked for the same employer, and did not express a preference for working in the previous position. His course of treatment involved physical therapy and chiropractic treatment. His deposition testimony indicated changes in activities, but he acknowledged that he had no physician-imposed restrictions. He did not offer any evidence that his decision not to engage in certain activities corresponded with a physician's observation of limited movement or a physical incapability of performing some motion. *McDaniel*, *supra* at 283; *Williams*, *supra* at 509. Moreover, the evidence did not show an impairment of short duration that had an extensive effect on his life.

We affirm.

/s/ Donald S. Owens  
/s/ Richard A. Bandstra  
/s/ Alton T. Davis